

Ishmael, Robin

July 6, 2016

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CONN CREDIT I, LP,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	4:15-CV-03713
SHERMAN ORIGINATOR III,	)	
	)	
LLC,	)	
	)	
Defendant.	)	
-----	)	

30 (b) (6) VIDEOTAPED DEPOSITION OF  
GARNET CAPITAL ADVISORS, LLC, by  
ROBIN ISHMAEL  
New York, New York  
Wednesday, July 6, 2016

Reported by:

TAMI H. TAKAHASHI, RPR, CSR



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1 Q. You're not on any sort of  
2 medication that would impair your ability to  
3 remember things or give your best testimony?

4 A. I'm not.

5 Q. You understand that you've been  
6 identified as the designee for Garnet Capital  
7 Advisors here today in response to a  
8 subpoena --

9 A. Yes.

10 Q. -- do you understand that?  
11 What is Garnet, just generally  
12 speaking?

13 A. They are a loan sale advisor. We  
14 are effectively the middleman for debt  
15 transactions.

16 Q. And what is your, I guess, title  
17 and also kind of functionally, what's your  
18 role currently at Garnet?

19 A. I'm one of the partners, so my  
20 title is managing partner. And I -- I run  
21 the firm operationally and I also do --  
22 participate in some transactions to the  
23 extent necessary, as I did in this subject  
24 transaction.

25 Q. How do you determine when to get

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1 wait until Trax had defaulted. So, that was  
2 part of the discussions with Robert all  
3 through August, was when is it appropriate.

4 And then once "when it was  
5 appropriate" was established, it was, you  
6 know, what can we say to Sherman. And  
7 because of the either actual litigation or  
8 potential litigation with Trax, we were told  
9 to limit what we said to the facts that we  
10 knew.

11 Q. What did Mr. Bell instruct you --  
12 and we'll talk about some documents, as well,  
13 and see if those bring anything else to the  
14 fore.

15 But sitting here now, what did  
16 Mr. Bell instruct Garnet to tell Sherman --  
17 to tell Sherman?

18 A. That Trax was having difficulty  
19 funding, which was one of the facts that we  
20 felt was very clear. And limit it to the  
21 facts that we felt comfortable with.

22 Q. Did Mr. Bell tell you not to say  
23 anything other than that to Sherman?

24 A. Whether he said explicitly or in so  
25 many words, the discussion was about what we

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1     **were limiting the conversation to.**

2           Q.     And what -- and I understand so  
3     many words.

4                     What do you remember him saying?

5           **A.     I don't think I can quote him.**

6           Q.     Okay. So, we talked about one  
7     thing you believed he said, but -- okay.  
8     We'll talk about some more documents later.

9                     Mr. DuBois, I believe, is how  
10    you -- spoken in better French than I would  
11    have.

12                    What was David Dubois's role in  
13    this transaction, as Garnet saw it?

14           **A.     I believe that he was, along with**  
15    **Clint, the kind of primary business contact**  
16    **that we had during the sale setup in terms**  
17    **of, I think, more approvals of, like, the**  
18    **marketing materials rather than information**  
19    **gathering. That's my understanding.**

20           Q.     Okay. So, more the kind of the  
21    practical, nitty-gritty level than Mr. Bell  
22    or Mr. Poppe; is that fair?

23           **A.     I -- I believe that David DuBois**  
24    **was more senior than Clint and that David was**  
25    **involved to the extent of kind of more of a**

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1 remember this instance, even better.

2 Does that initial opinion of value  
3 impact kind of where the tiers of  
4 compensation for Garnet are set?

5 A. We would certainly take where we  
6 think a portfolio would trade into -- into  
7 consideration when we are determining what  
8 fee we would charge a client.

9 Q. So "yes"?

10 A. Yes. Except that I don't know at  
11 what point we determined a fee, whether it  
12 was the first week or after a month of data,  
13 so -- and if it was based on an initial  
14 opinion of value or not is questionable, but  
15 generally speaking, yes, that's determined in  
16 that process.

17 Q. I understand. That's helpful.

18 A. Okay.

19 Q. Moving over to Phase 3, the heading  
20 "Marketing Process"; do you see that, as  
21 well?

22 A. Yes.

23 Q. Under that, for Garnet Services,  
24 the second bullet says, "Manage investor due  
25 diligence."

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1           **A.     Yes.**

2           **Q.     What does that mean in this**  
3           **context?**

4           **A.     That means permissioning buyers to**  
5           **a website where information is available,**  
6           **answering questions about the portfolio which**  
7           **we either do directly if we have the answers**  
8           **or we interface with Conn's to get the**  
9           **answers if we don't have them.**

10          **Q.     Perfect. And going down, my next**  
11          **question was going to be: For seller**  
12          **responsibility it says, "Answer investors**  
13          **questions (coordinated by Garnet)."**

14                 Can you just -- you already talked  
15          a bit about this just now, but what is the  
16          relationship when potential investors have  
17          questions about, I guess, the accounts or the  
18          potential transaction; what is the  
19          relationship in terms of communication lines  
20          among Garnet, the seller and the potential  
21          buyer?

22          **A.     The buyers are interfacing with**  
23          **Garnet and do not interface with the seller,**  
24          **so we're in the middle of everything, Garnet**  
25          **is. Many, many questions, we can answer**

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1     because, frankly, a lot of buyers just don't  
2     read the materials that carefully. And so  
3     we're able to point them to a place in the  
4     offering materials or a data file that  
5     answers their question. Or it may be  
6     something that we know of because of the work  
7     we've done with the seller at the outset that  
8     we can answer the question.

9             So, we handle kind of the frontline  
10     questions. And when they get to a level  
11     that's something we don't have an answer to,  
12     we interface with the seller to get the  
13     answer.

14            Q.    To essentially find out what you  
15     can share or what you should say to the  
16     potential buyer?

17            A.    No. Just to get an answer.

18            Q.    Okay.

19            A.    We don't really talk to a seller  
20     about what should be said or what can be  
21     said, because you get an answer and you  
22     communicate it or not.

23            Q.    And you relay that answer to the  
24     potential buyer?

25            A.    Correct.

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1 e-mail or a call and who was involved?

2 A. It would have been Lou Dipalma  
3 reaching out to Bryan Faliero. And it was  
4 probably both phone and e-mail. I don't know  
5 which specifically occurred first.

6 Q. And that would have been in late  
7 August time frame or --

8 A. That would have been late August.

9 Q. And what are you aware of in that  
10 first conversation, the substance of that  
11 conversation?

12 A. I'm aware that Lou asked Bryan if  
13 he wanted to -- if he was interested in  
14 buying any of the Conn's paper. And Bryan  
15 asked Lou, you know, "Why are you calling me;  
16 what happened?"

17 And Lou discussed that with Bryan.  
18 And he was still interested in moving  
19 forward.

20 Q. And what did Lou -- I take it,  
21 for -- in your preparation for today, you  
22 spoke about this particular conversation with  
23 Mr. Dipalma; is that correct?

24 A. I did.

25 Q. And what did Mr. Dipalma tell

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1 Mr. Faliero in response to the inquiry of why  
2 this was coming back?

3 **A. It was ultimately related to Trax**  
4 **having funding problems.**

5 Q. And what does that mean?

6 **A. That means that when a buyer is**  
7 **having funding problems and can't close a**  
8 **deal, that you need to find another buyer.**

9 Q. So, Mr. Dipalma told Mr. Faliero  
10 that Trax, in so many words, couldn't come up  
11 with the money; is that fair?

12 **A. Yes.**

13 Q. Did he tell Mr. Faliero anything  
14 else in response to that inquiry?

15 **A. I do not believe so.**

16 Q. And you spoke to Mr. Dipalma and  
17 asked him that question?

18 **A. I did.**

19 Q. Were there other calls or  
20 communications with Sherman that you're aware  
21 of based on your personal involvement or your  
22 inquiry before today's deposition, in which  
23 Garnet responded to inquiries of that sort  
24 from Garnet -- regarding why this was coming  
25 back to them?

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1 at least one other line, but I remember that  
2 from looking at this e-mail. But I don't  
3 remember that just from my memory.

4 Q. Okay. But in terms of  
5 communications from Conn -- or from Garnet to  
6 Sherman, you're not aware of any other  
7 communications --

8 A. No.

9 Q. -- responding to that inquiry?  
10 And how did it come -- we talked  
11 about a bit of this earlier, but just to  
12 retrace your steps.

13 How did it come about that  
14 Mr. Dipalma told Mr. Faliero that -- that the  
15 reason it was coming back to that market was  
16 that Trax was having funding problems?

17 A. Because, number one, that's what we  
18 believed that was at the root of everything  
19 that had happened that summer with Trax.  
20 And -- well, that was one of -- we -- we  
21 believed that and we believed that it was  
22 that Trax was not sophisticated enough to  
23 really deal with the paper.

24 We believed that it was those two  
25 issues that were at the root of all of this.

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1 And because of the potential or initial  
2 litigation with Conn's and Trax and the fact  
3 that we were instructed by Conn's to limit  
4 what we discussed with Sherman, we were  
5 comfortable doing so because we believed that  
6 there wasn't really a problem and that this  
7 was really boiling down to funding issues and  
8 the unsophistication of the buyer.

9 Q. So, before Mr. Dipalma spoke to  
10 Mr. Faliero, we already discussed this, but  
11 you had a discussion personally with Mr. Bell  
12 at Conn, correct?

13 A. Correct.

14 Q. And during that discussion --  
15 sorry.

16 Was that conversation had, in part,  
17 in order to figure out what Garnet should  
18 relay to Sherman in response to the inquiry  
19 from Mr. Faliero --

20 A. Not in --

21 Q. -- or the anticipated inquiry,  
22 perhaps?

23 A. That's better stated, because we  
24 had the conversation before we ever spoke to  
25 Bryan about what it would be appropriate to

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1     **share.**

2           Q.     So, how did that particular call  
3     between you and Mr. Bell come about; was  
4     that, okay, we're ready to go back to Sherman  
5     or should we go back to Sherman? Or what was  
6     the -- going into that call, what was the  
7     status?

8           A.     I don't remember if it was the -- I  
9     don't remember if that call happened after he  
10    said now is the appropriate time to go back  
11    to Sherman, or if we just knew it was going  
12    to be coming soon and we were preparing for  
13    it.

14                     But in any event, it was near the  
15    end of August when we knew we were going to  
16    be calling Bryan soon. And it was to  
17    establish what was appropriate today.

18           Q.     And Mr. Bell instructed that Garnet  
19    should say that -- or what did Mr. Bell tell  
20    Garnet it could or should say to Sherman in  
21    that regard?

22           A.     I understand the importance of  
23    this, and I do not know what his exact words  
24    were. I just know that at the end of the  
25    call, I knew that we could share that Trax

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1 was having funding issues.

2 How that -- what words were used  
3 and how that came about, I do not remember  
4 definitively.

5 Q. But you understood coming out of  
6 that call that Garnet had authority from Conn  
7 to tell Sherman that whatever the exact words  
8 were, that the reason that it was coming back  
9 to market, the reason that the prior buyer  
10 was out of the picture, was because that  
11 prior buyer had funding issues or couldn't  
12 come up with the money or something of that  
13 nature; is that right?

14 A. Correct.

15 Q. What do you -- and you also  
16 mentioned litigation or potential litigation  
17 between Trax and Conn, correct?

18 A. Correct.

19 Q. What did Mr. Bell indicate or say  
20 to you regarding that?

21 A. The reason why we needed to limit  
22 what we were saying to Bryan was either  
23 because they had just filed litigation --  
24 "they" meaning Conn against Trax, or it was  
25 imminent.

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1 BY MR. KASPER:

2 Q. Back to Exhibit 22. Under (C),  
3 what is the issue that's raised in that  
4 paragraph?

5 A. This issue is -- I mean, I can read  
6 to you what he says the issue is or I can  
7 tell you what I really think the issue is.

8 Q. No. I'm interested in what Trax  
9 conveyed was their understanding of the  
10 issue.

11 A. Okay. I don't know if I can  
12 interpret that any better than you can, but  
13 they are saying that the letter  
14 misrepresented the gross balance of the  
15 accounts that were sold, including settled  
16 accounts, structured payments and various  
17 other things on this list here. So, what  
18 they have said is, I believe, what they're  
19 stating their issue is.

20 Q. And I'll just read part of their --  
21 I take it that's what's in all caps here is  
22 something you took from the letter from Trax  
23 verbatim, is that your best understanding,  
24 and then answered it; is that right?

25 A. Probably. Probably cut and paste.

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1     **It doesn't look like my words.**

2           Q.     Okay. So (C) begins, "Seller  
3     misrepresented the gross balance of the  
4     accounts that were sold." And it goes on  
5     from there.

6                     And they go on to say that for  
7     those reasons, they felt it was that -- that  
8     constituted breach of 8.6 -- Section 8.6 of  
9     their agreement with Conn?

10           A.     Um-hum.

11           Q.     Do you see that?

12                     Did you ever tell Sherman that the  
13     previous buyer -- did you, Garnet, ever tell  
14     Sherman that the previous buyer had raised  
15     concerns that they believed that Conn had  
16     misrepresented the gross balance of the  
17     accounts that had been sold to them?

18           A.     No, because every portfolio we've  
19     ever sold to Sherman has some of these same  
20     issues in it. And it's not issues.  
21     Structured settlements, you sell the full  
22     balance. If there's a settlement in process,  
23     that's expected and the buyers like it.  
24     They're getting a large collection with no  
25     work. So no, we did not inform Sherman of

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1     **this.**

2           Q.    This was one of the issues that was  
3    raised by Trax --

4           **A.    Yes.**

5           Q.    -- in the context that led to them  
6    refusing to fund and being unwilling to fund  
7    further deliveries on their contract with  
8    Conn, correct?

9           **A.    Yes.**

10          Q.    You did not tell Sherman about that  
11   issue having been raised by the previous  
12   buyer?

13          **A.    That is correct.**

14               MR. MULRY:  Objection.

15   BY MR. KASPER:

16          Q.    And under (C), just above (D) in  
17   what I take to be the last line of your  
18   response to (C) --

19          **A.    Yes.**

20          Q.    -- you write, "I don't really  
21   understand the life insurance issue and have  
22   no feedback on it."

23          **A.    Correct.**

24          Q.    Could you just help me understand,  
25   I guess, the limits of your knowledge on that

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1 had resulted in litigation?

2 MR. MULRY: Objection.

3 A. I don't know if they would have or  
4 not.

5 BY MR. KASPER:

6 Q. I understand you don't know this.  
7 Do you believe that they would have?

8 MR. MULRY: Objection.

9 A. I just don't know because there's a  
10 lot of litigation in the collection industry.  
11 So, the fact that there's litigation between  
12 parties is not necessarily something that I  
13 think would be something that they would say  
14 "show stopper." I don't know.

15 BY MR. KASPER:

16 Q. Well, is one reason that Garnet  
17 chose not to inform Sherman of that  
18 litigation because Garnet was concerned that  
19 it would make Sherman less likely to enter a  
20 deal or would cause Sherman to pay less than  
21 it actually did?

22 A. No. Our rationale in not telling  
23 them was, A, we didn't believe there was a  
24 problem. And, B, that we were specifically  
25 told not to tell them more than they wouldn't

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1 fund.

2 Q. And who specifically told you not  
3 to tell Sherman more than the previous buyer  
4 was unable to fund?

5 A. As discussed earlier, the  
6 conversation I had with Robert Bell.

7 Q. Was that a phone conversation?

8 A. I think.

9 Q. I think it's a separate  
10 conversation, but the top of this e-mail,  
11 Exhibit 23, you write to Mr. Dipalma that,  
12 "Robert Bell wants me to call him so I'll do  
13 that soon and let you know if there's  
14 anything to know."

15 Do you remember a call with  
16 Mr. Bell around this time regarding the  
17 prospect of litigation?

18 A. No. The calls we've had, we've  
19 already discussed. And I don't know what  
20 this specific reference is to.

21 (Defendant's Exhibit 24, E-mail  
22 dated 8/22/2014, from Robin Ishmael to  
23 Sean McVity and Lou Dipalma, marked for  
24 identification as of this date.)

25 BY MR. KASPER:

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1           A.    With respect to the disputes  
2   specifically, what I was told -- I don't  
3   remember if it was call or e-mail, but  
4   probably an e-mail -- that the types of  
5   things that the borrowers were telling  
6   Sherman were typical of the excuses that  
7   borrowers give to Conn's that they routinely  
8   hear and routinely deal with and that they're  
9   not based in any actual issues.

10          Q.    So, this doesn't indicate that  
11   Sherman was making excuses?

12          A.    No, no. This was -- no. This is  
13   about the borrowers making excuses which led  
14   to this high dispute rate. That's what this  
15   is about.

16          Q.    So, this doesn't -- did Conn  
17   indicate whether the dispute rate that  
18   Sherman was seeing and reporting was higher  
19   than they would have expected?

20          A.    I don't know if they indicated  
21   that, but they thought that the level of  
22   disputes was a result of Sherman not handling  
23   the assertion of disputes properly  
24   because --

25          Q.    Do you --

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